

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, TYLER MAGILL, APRIL
MUNIZ, HANNAH PEARCE, MARCUS
MARTIN, JOHN DOE, JANE DOE 1, JANE
DOE 2, and JANE DOE 3,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER,
CHRISTOPHER CANTWELL, JAMES
ALEX FIELDS, JR., VANGUARD
AMERICA, ANDREW ANGLIN,
MOONBASE HOLDINGS, LLC, ROBERT
“AZZMADOR” RAY, NATHAN DAMIGO,
ELLIOT KLINE a/k/a/ ELI MOSELY,
IDENTITY EVROPA, MATTHEW
HEIMBACH, MATTHEW PARROTT a/k/a
DAVID MATTHEW PARROTT,
TRADITIONALIST WORKER PARTY,
MICHAEL HILL, MICHAEL TUBBS,
LEAGUE OF THE SOUTH, JEFF SCHOEP,
NATIONAL SOCIALIST MOVEMENT,
NATIONALIST FRONT, AUGUSTUS SOL
INVICTUS, FRATERNAL ORDER OF THE
ALT-KNIGHTS, MICHAEL “ENOC”
PEINOVICH, LOYAL WHITE KNIGHTS OF
THE KU KLUX KLAN, and EAST COAST
KNIGHTS OF THE KU KLUX KLAN a/k/a
EAST COAST KNIGHTS OF THE TRUE
INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

JURY TRIAL DEMANDED

**DOE PLAINTIFFS’ MOTION TO STRIKE DEFENDANT FIELDS’ UNTIMELY
OPPOSITION TO MOTION TO PROCEED UNDER PSEUDONYMS**

PRELIMINARY STATEMENT

Four weeks after his deadline, Defendant Fields filed an untimely opposition to the Doe Plaintiffs Motion to Proceed by Pseudonym. In his opposition, Fields identifies no reason for his month's long delay. Rather, he asks the Court to accept without explanation a filing he knew—or clearly should have known—was due a month earlier. The Pretrial Order entered in this case, and fundamental rules of fairness, require that the Court strike Fields' opposition.

FACTS

On November 13, 2017, Doe Plaintiffs filed a Motion to Proceed by Pseudonym. ECF No. 98. Defendant Fields, and all other Defendants registered with the ECF system, received notice of Doe Plaintiffs' filing immediately. Pursuant to the Pretrial Order, ECF No. 101, Defendant Fields' deadline to oppose the Doe Plaintiffs' Motion was November 28, 2017. Neither Defendant Fields, nor any other served Defendant, opposed Plaintiffs' Motion. In light of the absence of opposition to Plaintiffs motion, and pursuant to Local Rule 11(b), Plaintiffs sought Defendants' consent to proceed on the then-unopposed motion without a hearing. Ex. A. Fields withheld consent. *Id.* Plaintiffs' counsel reminded counsel for Fields that the motion was unopposed and informed him that Plaintiffs intended to file a notice with the Court informing it of certain parties' agreement to proceed without a hearing. *Id.* Three hours later, and over four weeks after his deadline to do so, Fields opposed Plaintiffs' motion.¹

¹ In an abundance of caution, and in no way acknowledging the propriety of Defendant Fields' untimely opposition, Plaintiffs intend to file a Reply in Support of the Doe Plaintiffs' Motion to Proceed Under Pseudonyms on January 4, 2018 (the deadline called for by this Court's rules).

ARGUMENT

I. THE PRETRIAL ORDER PRECLUDES CONSIDERATION OF FIELDS' UNTIMELY OPPOSITION

The Pretrial Order in this case sets forth the schedule for parties' briefing of motions, and the consequences for any failure to adhere to that schedule. The Pretrial Order provides:

If any motion, properly filed and briefed, is to be opposed, a brief in opposition must be filed within 14 days of the date of service of the movant's brief (or within 14 days of this order if a motion and supporting brief were served before this order). Except for good cause shown, *if a brief opposing a motion is not timely filed, the court will consider the motion to be unopposed.*

ECF No. 101, ¶ 7 (emphasis added). Defendant Fields' opposition was plainly untimely, and he offers no cause, let alone *good* cause, excusing his delay. For this reason alone, Defendant Fields' untimely opposition should be stricken.

II. FIELDS 'ARGUMENT' FOR THE CONSIDERATION OF HIS UNTIMELY OPPOSITION FAILS

Nowhere in Defendant Fields' untimely opposition does he identify any reason for his untimeliness, evincing an apparent belief that no such justification is necessary. Rather, Defendant Fields offers only one argument in favor of considering his month's late opposition: that "the right to proceed under a pseudonym or fictitious name should not be granted automatically even if no opposing party objected." (Opp. 5.) Plaintiffs don't disagree, and submitted to the Court their Motion to Proceed Under Pseudonym with the expectation that the Court would consider the merit of their arguments before deciding the motion, regardless of whether Defendants opposed. That the Court should not grant motions automatically does not, though, erase a party's obligation to timely file responsive motions. And Fields' two-sentence argument fall far short from establishing the "excusable neglect" necessary in this District.

McLean v. Broadfoot, No. 4:10-CV-00019, 2011 WL 1833302, at *8-9 (W.D. Va. May 13, 2011).

CONCLUSION

For the foregoing reasons, the Court should strike Defendant Fields untimely Opposition to Plaintiffs' Motion to Proceed Under Pseudonyms.

Dated: December 29, 2017

Respectfully submitted,

s/ Robert T. Cahill

Robert T. Cahill (VSB 38562)

COOLEY LLP

11951 Freedom Drive, 14th Floor

Reston, VA 20190-5656

Telephone: (703) 456-8000

Fax: (703) 456-8100

rcahill@cooley.com

Of Counsel:

Roberta A. Kaplan (*pro hac vice*)

Julie E. Fink (*pro hac vice*)

Christopher B. Greene (*pro hac vice*)

Seguin L. Strohmeier (*pro hac vice*)

KAPLAN & COMPANY, LLP

350 Fifth Avenue, Suite 7110

New York, NY 10118

Telephone: (212) 763-0883

rkaplan@kaplanandcompany.com

jfink@kaplanandcompany.com

cgreene@kaplanandcompany.com

sstrohmeier@kaplanandcompany.com

Karen L. Dunn (*pro hac vice*)

William A. Isaacson (*pro hac vice*)

BOIES SCHILLER FLEXNER LLP

1401 New York Ave, NW

Washington, DC 20005

Telephone: (202) 237-2727

Fax: (202) 237-6131

kdunn@bsfllp.com
wisaacson@bsfllp.com

Philip M. Bowman (*pro hac vice*)
Yotam Barkai (*pro hac vice*)
Joshua J. Libling (*pro hac vice*)
BOIES SCHILLER FLEXNER LLP
575 Lexington Ave.
New York, NY 10022
Telephone: (212) 446-2300
Fax: (212) 446-2350
pbowman@bsfllp.com
ybarkai@bsfllp.com
jlibling@bsfllp.com

Alan Levine (*pro hac vice*)
COOLEY LLP
1114 Avenue of the Americas, 46th Floor
New York, NY 10036
Telephone: (212) 479-6260
Fax: (212) 479-6275
alevine@cooley.com

David E. Mills (*pro hac vice*)
COOLEY LLP
1299 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004
Telephone: (202) 842-7800
Fax: (202) 842-7899
dmills@cooley.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2017, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

Justin Saunders Gravatt
David L. Hauck
David L. Campbell
Duane, Hauck, Davis & Gravatt, P.C.
100 West Franklin Street, Suite 100
Richmond, VA 23220
jgravatt@dhdglaw.com
dhauck@dhdglaw.com
dcampbell@dhdglaw.com

Counsel for Defendant James A. Fields, Jr.

Bryan Jones
106 W. South St., Suite 211
Charlottesville, VA 22902
bryan@bjoneslegal.com

Counsel for Defendants Michael Hill, Michael Tubbs, and League of the South

Elmer Woodard
5661 US Hwy 29
Blairs, VA 24527
isuecrooks@comcast.net

James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
jek318@gmail.com

Counsel for Defendants Jeff Schoep, Nationalist Front, National Socialist Movement, Matthew Parrott, Matthew Heimbach, Robert Ray, Traditionalist Worker Party, Elliot Kline, Jason Kessler, Vanguard America, Nathan Damigo, Identity Europa, Inc., and Christopher Cantwell

I further hereby certify that on December 29, 2017, I also served the following non-ECF participants, via U.S. mail, First Class and postage prepaid, addressed as follows:

Loyal White Knights of the Ku Klux Klan
a/k/a Loyal White Knights Church of the
Invisible Empire, Inc.
c/o Chris and Amanda Barker
P.O. Box 54
Pelham, NC 27311

Richard Spencer
1001-A King Street
Alexandria, VA 22314

Michael Peinovich
a/k/a Michael "Enoch" Peinovich
PO Box 1069
Hopewell Junction, NY 12533

Moonbase Holdings, LLC
c/o Andrew Anglin
6827 N. High Street, Suite 121
Worthington, OH 43085

Andrew Anglin
6827 N. High Street, Suite 121
Worthington, OH 43085

East Coast Knights of the Ku Klux Klan
a/k/a East Coast Knights of the True
Invisible Empire
26 South Pine St.
Red Lion, PA 17356

Fraternal Order of the Alt-Knights (c/o
Proud Boys)
c/o LegalCorp Solutions, LLC
11 Broadway, Suite 615
New York, NY 10004

Augustus Sol Invictus
206 N. Mills Avenue
Orlando, FL 32801

s/ Robert T. Cahill
Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
Email: rcahill@cooley.com

Counsel for Plaintiffs

158721086